UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PLUG POWER, INC. SECURITIES LITIGATION	No. 1:21-cv-2004-ER JURY TRIAL DEMANDED

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT
FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

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1. Lead Plaintiff Manfred Schumacher ("Lead Plaintiff"), by and through his undersigned counsel, alleges the following upon information and belief, except as to those allegations concerning the Lead Plaintiff certification, which are alleged upon personal knowledge. Lead Plaintiff's information and belief is based upon, among other things, Lead Counsel's investigation, which includes without limitation, review and analysis of filings with the United States Securities and Exchange Commission ("SEC"), press releases, news articles, and analyst reports. Lead Plaintiff believes that additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

I. INTRODUCTION

2. Plug Power is a publicly traded company with common stock listed on the NASDAQ and is subject to the requirements of the Securities Exchange Act of 1934 (the "Exchange Act").

3. Lead Plaintiff seeks to recover damages caused by Defendants' violations of Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

4. This securities fraud class action is on behalf of a class of all persons who purchased Plug Power Inc. ("Plug Power") common stock on the open market of a U.S. stock exchange between November 9, 2020 and March 16, 2021, inclusive (the "Class Period"), and were damaged thereby (the "Class").

5. Plug Power provides comprehensive hydrogen fuel cell turnkey solutions focused on systems used to power electric motors in the electric mobility and stationary power markets. Plug Power primarily provides fuel cells for forklifts operating in warehouses of some of the world's largest retail-distribution and manufacturing businesses, including Amazon, Walmart, and Home Depot.

6. A large part of Plug Power's revenue comes from delivering hydrogen fuel to customers of its hydrogen fuel cells, for which revenue is then offset by the costs of delivering the fuel.

7. Prior to and during the Class Period, the Defendants reported that though Plug Power's fuel delivery costs were high, the Company was able to turn a profit and have positive EBITDA.

8. As the Company touted its growing profitability, the stock price of Plug Power's common stock inflated to record highs.

9. The Defendants took advantage of the inflated stock price by selling Plug Power stock for tens of millions of dollars of insider sales. Defendant Andrew Marsh capitalized on the Company's inflated stock price by selling 43% of his holdings for approximately $37.7 million, when Plug Power's common stock price was at its peak and just six weeks from announcing its need to restate years of financial statements. Defendant Paul Middleton also profited by netting approximately $7.6 million from insider sales during the Class Period.

10. The Company raised over $3.5 billion from investors to support its capital-intensive business (including the largest bought deal in the cleantech sector and the most lucrative capital raise in the Company's 24-year history) by relying on its inflated financial results from the fiscal years ("FY") 2018, 2019, and 2020.

11. Unbeknownst to investors, however, was the fact that Defendants were hiding even higher fuel delivery costs as research and development expenses. This misclassification shielded millions of dollars in fuel costs from negatively impacting cost of revenue and profits, and made Plug Power's business model appear to be a success. The misclassification also negatively impacted EBITDA reported during 2020 because restating the fuel delivery costs increased the loss accruals required for Plug Power's extended maintenance contracts.

12. It was not until a change in auditors that the Company had to admit that it may need to restate its financial results for FY2018, FY2019, and for results reported during FY2020.

13. On March 2, 2021, just weeks after Defendants completed a colossal sale of shares to the largest energy provider in South Korea, Defendants conducted a secondary public offering, and Defendant Marsh executed incredibly lucrative insider trading sales, Plug Power filed a Notification of Late Filing with the SEC. Plug Power stated that it could not timely file its 2020 Form 10-K because the Company was completing a "review and assessment of the treatment of certain costs with regards to classification between research and development versus costs of goods sold, the recoverability of right of use assets associated with certain leases, and certain internal controls over these and other areas." The Company also stated that "[i]t is possible that one or more of these items may result in charges or adjustments to current and/or prior period financial statements."

14. On this news, the Company's stock price fell $3.68, or 7%, to close at $48.78 per share on March 2, 2021, on unusually heavy trading volume, thereby damaging investors.

15. On March 16, 2021, Plug Power revealed that the Company needed to restate its prior financial results for FY2018 and FY2019 and quarterly filings for 2019 and 2020 (the "Previously Issued Financial Statements"). Pug Power informed investors that the Company's Previously Issued Financial Statements could not be relied upon and that the Company expected to revise the accounting for the Previously Issued Financial Statements, including reclassifying certain research and development expenses as costs of revenue—directly reducing the Company's gross profits, and disclosed a material weakness in the Company's internal controls over financial reporting.

16. As a result of this news, the price of Plug Power's stock fell $3.35 per share to close at $39.33 per share on March 17, 2021, a decline of over 7.8%, thereby causing further damages to investors.

17. Ultimately, Plug Power admitted that its prior representations about its gross profit and EBITDA were materially false when it restated those metrics from positive profits to gross losses with negative EBITDAs for results touted during the Class Period.

18. One analyst summed up the fuel delivery restatement as inexcusable and shocking, while noting there was no justification to classify fuel costs as research and development expenses except to intentionally overstate the value of Plug Power's business.

II. JURISDICTION AND VENUE

19. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

20. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

21. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this judicial district.

22. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of national securities exchanges.

III. THE PARTIES

23. Lead Plaintiff, as set forth in the certification provided herewith, purchased Plug Power common stock during the Class Period and suffered damages as a result of Defendants' federal securities law violations.

24. Defendant Plug Power is incorporated under the laws of Delaware with its principal executive offices located in Latham, New York. At all relevant times, the Plug Power common stock was listed on the NASDAQ exchange in New York, NY under the symbol "PLUG."

25. Defendant Andrew Marsh ("Marsh") is the Company's CEO, President, and a member of its board of directors. Defendant Marsh has been CEO of the Company since April of 2008 and was its CEO throughout the entirety of the Class Period. Defendant Marsh signed the Company's Annual Reports on Form 10-K for the fiscal years 2016-2019, Quarterly Report on Form 10-Q for the third quarter of FY2020 and letters to shareholders dated November 9, 2020 and February 25, 2021, which reported Plug Power's financial results for the third and fourth quarter of FY2020, respectively.

26. Defendant Paul B. Middleton ("Middleton") is the Company's CFO. Defendant Middleton has been the CFO of the Company since 2014 and was its CFO throughout the entirety of the Class Period. Defendant Middleton signed the Company's Annual Reports on Form 10-K for the fiscal years 2016-2019, Quarterly Report on Form 10-Q for the third quarter of FY2020 and letters to shareholders, dated November 9, 2020 and February 25, 2021, which reported Plug Power's financial results for the third and fourth quarter of FY2020, respectively.

27. Defendants Marsh and Middleton (collectively, the "Individual Defendants"), by virtue of their high-level positions with Plug Power, possessed the power and authority to control the contents of the Company's reports filed with the SEC, and public statements, including

Company-issued press releases, letters to shareholders, and presentations to securities analysts, money and portfolio managers, and investors. The Individual Defendants were provided with copies of the Company's reports and letters to shareholders alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected, including to disclose all material information omitted from those disclosures, as alleged herein. Because of their positions and access to material, non-public information, each of the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations being made were then materially false and/or misleading.

28. Defendant Plug Power and the Individual Defendants are collectively referred to as "Defendants."

IV. SUBSTANTIVE ALLEGATIONS

A. Plug Power's Hydrogen Fuel Cell Business

29. Plug Power was formed in 1997 and provides comprehensive hydrogen fuel cell (HFC) turnkey solutions focused on systems used to power electric motors in the electric mobility and stationary power markets.

30. Plug Power sells itself as building the hydrogen economy by serving as the leading provider of HFC turnkey solutions amid an ongoing paradigm shift in the power, energy, and transportation industries to address climate change and energy security, while providing efficiency gains and meeting sustainability goals. Plug Power created the first commercially viable market for HFC technology. As a result, the Company has deployed over 40,000 fuel cell systems for e-mobility, more than anyone else in the world, and has become the largest buyer of liquid hydrogen, having built and operated a hydrogen highway across North America.

31. Plug Power's business evolved into developing and selling commercially viable hydrogen and fuel cell product solutions, also known as GenDrive, to replace lead-acid batteries in electric material handling vehicles for some of the world's largest retail-distribution and manufacturing businesses, including Amazon, Walmart, and Home Depot. This business primarily consists of providing fuel cells for forklifts and ground support equipment operating in the warehouses of large customers with 24/7/365 operations and high equipment usage.

32. Plug Power is a capital-intensive business, requiring cash infusions to bring its technology to the market.

33. Due to Plug Power's efforts to expand and diversify, the Company's cash usage accelerated to new all-time highs by FY2020.

Cash Usage – FY2012-FY2020 (In Millions)					
	FY2020	**FY2019**	**FY2018**	**FY2017**	**FY2016**
Operating Activities	$156.31	$51.52	$57.62	$60.18	$29.64
Investing Activities	$95.33	$14.24	$19.57	$44.36	$58.08
Total	**$251.64**	**$65.76**	**$77.19**	**$104.54**	**$87.72**

B. Tracking Research and Development Expenses and Fuel Costs Were Critical to Plug Power's Business

34. As the fuel cell industry is still in the early state of adoption, Plug Power's ability to compete successfully is heavily dependent on its ability to raise capital, ensure a continual and timely flow of competitive products, services, and technologies to the marketplace. According to Plug Power's 2020 Annual Report filed with the SEC on Form 10-K, the Company must "continue to develop new products and technologies and to enhance existing products in the

areas of cost, size, weight, and in supporting service solutions in order to drive further commercialization."

35. Financial Accounting Standards Board (FASB) No.2 defines Research and Development as follows:

> *Research* is planned search or critical investigation aimed at discovery of new knowledge with the hope that such knowledge will be useful in developing a new product or service (hereinafter "product") or a new process or technique (hereinafter "process") or in bringing about a significant improvement to an existing product or process.
>
> *Developmen*t is the translation of research findings or other knowledge into a plan or design for a new product or process or for a significant improvement to an existing product or process whether intended for sale or use. It includes the conceptual formulation, design, and testing of product alternatives, construction of prototypes, and operation of pilot plants. It does not include routine or periodic alterations to existing products, production lines, manufacturing processes, and other on-going operations even though those alterations may represent improvements and it does not include market research or market testing activities.

36. Under the Generally Accepted Accounting Principles (GAAP), codified by the FASB, whenever a company spends any funds on research and development activities, it records those costs as an expense in the period incurred.

37. A company's research and development expenses are included in the company's operating expenses and are usually reflected in its income statement. A company's total operating expenses is used to calculate its operating income by subtracting it from the gross profit. This is opposed to the direct costs of producing, distributing, or marketing the goods sold by a company (cost of goods sold) or cost of revenue, which directly contributes to a company's gross profit. A company's gross profit is computed by subtracting a company's total cost of revenue from the company's total revenue.

38. The Company advised investors that "[r]esearch and development expense includes: materials to build development and prototype units, cash and non-cash compensation

and benefits for the engineering and related staff, expenses for contract engineers, fees paid to consultants for services provided, materials and supplies consumed, facility related costs such as computer and network services, and other general overhead costs associated with our research and development activities."

39. Defendants knew or recklessly disregarded that research and development expenses do not include the costs of fuel delivered to customers, which are reported separately by Plug Power.

40. The Company's 2018 and 2019 Annual Reports filed with the SEC on Form 10-K highlighted fuel delivered to customers as one of the "primary sources" of revenue along with the related costs for the Plug Power for which it reported the corresponding cost of revenue and gross (loss) profit.

41. The Company described the cost of revenue involved for fuel delivered to customers while disclosing the results of operations. The FY2018 10-K and FY2019 10-K stated that the "[c]ost of revenue from fuel delivered to customers represents the purchase of hydrogen from suppliers that ultimately is sold to customers. As part of the GenKey solution, the Company contracts with fuel suppliers to purchase liquid hydrogen and separately sells it to its customers when delivered or dispensed."

42. According to the FY2019 10-K, the "[c]ost of revenue from fuel delivered to customers for the year ended December 31, 2019 increased $8.6 million, or 31.2%, to $36.4 million from $27.7 million for the year ended December 31, 2018. The increase was due primarily to higher volume of liquid hydrogen delivered to customer sites as a result of an increase in the number of hydrogen installations completed under GenKey agreements and higher fuel costs."

43. According to the FY2018 10-K, the "[c]ost of revenue from fuel delivered to customers for the year ended December 31, 2018 increased $5.7 million, or 25.9%, to $27.7 million from $22.0 million for the year ended December 31, 2017. The increase is due primarily to higher volume of liquid hydrogen delivered to customer sites as a result of an increase in the number of hydrogen installations completed under GenKey agreements and higher fuel costs."

44. The cost of fuel delivered was a major drag on the Company's net revenue and ability to profit. Defendants tracked and reported the cost of fuel delivered in the Company's financial statements throughout the Class Period.

45. The cost of fuel also affected Plug Power's loss accruals for extended maintenance contracts, a type of cost of revenue. Increases in cost of fuel negatively impacted EBITDA because that increased the loss accruals required for Plug Power's extended maintenance contracts which directly reduced the Company's operating income.

C. Plug Power Extols Its Newfound Profitability

46. In Plug Power's twenty-four-year history, the Company has never generated an operating profit.[1]

47. In FY2018 and FY2019, Plug Power was able to generate gross profits of $2.62 million and $27.97 million, respectively, in consecutive years for the first time in a decade.

48. For FY2020, the Company advised investors that EBITDA was an important metric to value the Company and that Plug Power relied on "Adjusted EBITDA" as "a basis for evaluating the Company's performance as well as for forecasting future periods."[2]

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[1] Operating Profit is a company's gross profits, less operating expenses, depreciation, and amortization. Gross profits are a company's revenue, less the cost of goods sold ("COGS").

[2] The Company defined Adjusted EBITDA as "operating income (loss), plus stock-based compensation, plus depreciation and amortization, plus right-of-use asset depreciation and interest associated with PPA financings, plus restructuring and other non-recurring charges."

49. On January 30, 2020, during a business update conference call, Defendant Marsh lauded that "2019 was really a breakout year for Plug Power, EBITDA-positive for the year." Defendant Middleton underscored this result and stated the Company "has now crossed a milestone in breaking into breakeven to positive EBITDAs and projecting that this year we're going to be moving in directionally north in the right way. That gets investors and the debt providers excited." Defendant Marsh further provided a financial target for 2020 of "adjusted EBITDA of $20 million, a $20 million improvement over our 2019 goal" and reiterated the Company's goals of $1 billion in gross billings, $200 million in EBITDA and $170 million in operating income by 2024.

50. In a letter to shareholders, dated March 5, 2020, containing Plug Power's financial results for the fourth quarter of FY2019, the Company previewed its year-end results for FY2019 which it described as the "best year in the Company's history – setting the stage for meaningful growth in 2020 and beyond." The Company achieved this "milestone breakthrough year with [its] first positive adjusted EBITDA" in the Company's history. Specifically, the Company netted an adjusted EBITDA of $10.9 million. During the Company's earnings call that same day, Defendant Marsh described FY2019 as a "record year".

51. In a letter to shareholders, dated May 5, 2020, containing Plug Power's financial results for the first quarter of FY2020, the Company noted that it had achieved a $6.1 million Adjusted EBITDA, a "30% improvement" from the first quarter of FY2019. During the Company's earnings call that same day, Defendant Marsh reiterated the Company's "guidance of $300 million in gross bookings for the year and $20 million in EBITDA" and the Company's 2024 goals of $200 million in EBITDA and $170 million in operating income.

52. On August 6, 2020, during Plug Power's earnings call for the second quarter of FY2020, Defendant Marsh stated that the Company "had a record quarter in the middle of the pandemic, achieving over $72 million in gross billings and $1 million in EBITDA." Defendant Marsh added that with the Company's "success this year with rapid growth in gross billings and EBITDA, a move into green hydrogen, that's provided us a clear path to achieve $1.2 billion in revenue and $250 million in EBITDA in 2024."

53. On November 9, 2020, during Plug Power's earnings call for the third quarter of FY2020, Defendant Marsh commended the Company's "operational performance" and highlighted that it "achieved 19% EBITDA on an adjusted basis this past quarter, generating $21.2 million of adjusted EBITDA."

54. During the same call, Moses Sutton, an analyst from Barclays, asked whether Defendants could provide the market with adjusted EBITDA guidance for 2021. Defendant Marsh responded that while the Company has not provided the market with a specific adjusted EBITDA guidance range yet for 2021, that "it will definitely be higher [than 2020]" and that the Company is "very confident that we'll continue to be accretive and go up." Defendant Marsh stated they would be in a better position to provide guidance during the Company's January business update call.

D. Plug Power Raises $1 Billion from Investors through a Secondary Public Offering at a Price of $22 Per Share Based on Overstated Financial Statements

55. On December 2, 2019, Plug Power filed an Automatic Shelf Registration Statement that would allow the Company to make multiple offerings of its securities at unspecified times in the future without having to file a new registration statement for each offering (the "Shelf Registration Statement"). The Shelf Registration Statement became effective on December 2, 2019.

56. On November 16, 2020, the Company issued two press releases announcing an impending secondary public offering ($750,000 of its common stock) and its pricing ($22.25 per share). Both press releases directed investors to rely on the prospectus supplement related to the offering, as well as the Company's previous financial statements incorporated therein and filed with the SEC.

57. On November 18, 2020, Plug Power filed a prospectus pursuant to Rule 424(b)(2), in connection with the Shelf Registration Statement, offering 38 million shares of its common stock at a price to the public of $22.25 per share (the "November Prospectus"). The Company also granted the underwriters a 30-day option to purchase up to an additional 5,700,000 shares.

58. Among other things, the November Prospectus disclosed a summary of selected consolidated financial data. This included financial data for the fiscal years of 2017, 2018 and 2019 as well as unaudited financial data for the nine months ended September 30, 2020.

59. In connection with FY2017, the November Prospectus stated that the Company netted a gross (loss) profit of ($28.09) million and incurred $28.69 million in research and development expenses.

60. In connection with FY2018, the November Prospectus stated that the Company netted a gross profit of $2.62 million and incurred $27.71 million in costs related to fuel delivered to customers and $33.91 million in research and development expenses.

61. In connection with FY2019, the November Prospectus stated that the Company netted a gross profit of $27.97 million and incurred $36.36 million in costs related to fuel delivered to customers and $33.68 million in research and development expenses.

62. In connection with the nine months ended September 30, 2020, the November Prospectus stated that the Company netted a gross (loss) profit and operating (loss) income of ($.69) million and ($79.77) million, respectively, and incurred $4.31 million in costs related to provision for loss contracts related to service, $32.27 million in costs related to fuel delivered to customers, and $32.13 million in research and development expenses.

63. The November Prospectus also incorporated by reference the Annual Report on Form 10-K for FY2019, which utilized the consolidated statements of operations data for the years ended December 31, 2019, 2018 and 2017 and the balance sheet data as of December 31, 2019 and 2018, and the Quarterly Reports on Form 10-Q for the first three quarters of FY2020. All of these reports contain the same financial data detailed in the aforementioned summary of selected consolidated financial data.

64. On November 24, 2020, Plug Power announced that it had completed the offering which generated approximately $1 billion in capital and marked one of the largest bought equity deal transactions in the broader clean-tech sector and the largest capital raise in the Company's history. The Company further noted that "[t]he capital raise uniquely positions Plug Power to execute and accelerate on its green hydrogen strategy as well as other strategic growth initiatives."

E. Defendant Middleton Takes Advantage of Plug Power's Inflated Stock Price for His Own Personal Benefit

65. For the majority of 2010-2019, Plug Power common stock traded below $5.00 per share.

66. On December 24, 2020, 30 days after Plug Power's $1 billion offering at $22 per share reinforcing Plug Power's financial results, Defendant Middleton sold 216,667 shares of his

personally held Plug Power stock at a price of $35.1299 per share. This sale netted Defendant Middleton proceeds of approximately $7.6 million.

67. Defendant Middleton's sale was made pursuant to a Rule 10b5-1 trading plan that was established just three months earlier in September 2020 while Defendants were reporting false financial metrics.

68. In order to effectuate this sale, Defendant Middleton exercised options that were not due to expire until 2028 and 2029 - eight to nine years before their expiration.

69. Defendant Middleton's decision to exercise his options eight to nine years before their expiration further shows that he knew Plug Power's stock price was did not reflect Plug Power's true financial condition.

F. Plug Power Gains $1.5 Billion from SK Group's Purchase of Plug Power's Common Stock

70. On January 6, 2021, after the close of the market, Plug Power and South Korean company SK Group ("SK Group"), the largest energy provider in South Korea, announced their intention to provide hydrogen fuel cell systems, hydrogen fueling stations, and electrolyzers to the Korean and broader Asian markets through a joint venture company to be located in South Korea.

71. SK Group agreed to make a $1.5 billion strategic investment in Plug Power. Under the terms of the investment, which closed later in the first quarter of 2021, a United States subsidiary of SK Group would make the $1.5 billion investment in Plug Power by acquiring approximately 51.4 million shares of common stock. The investment was expected to represent an approximate 9.9% ownership of Plug Power's issued and outstanding common stock.

72. Analysts regarded the SK Group partnership as a very substantial development for Plug Power. For example, a January 7, 2021 Barclays report described this as a "landmark" deal

for Plug Power and the "***ultimate example of one of the needle-moving headlines investors have been anticipating to drive the stock to new heights***". (Emphasis added). The Barclays report added that "such a substantial investment from a leading conglomerate helps validate PLUG's leading IP and potential fuel cell market share in the very long term." Similarly, a January 7 2021 Craig-Hallum report noted that this partnership "cements [Plug Power's] place as a global hydrogen fuel cell leader" and "meaningfully enhances [its] growth outlook and speed of entry into Asia." A June 6, 2021 Cowen & Co. report described this deal as a "clearly a positive development", maintained Plug Power's "outperform" rating, and raised their share price target to $50 from $35 prior.

73. Following this announcement, on January 7, 2021, Plug Power's stock price jumped 35% and closed at $47.29.

74. Later, on February 25, 2021, Plug Power and SK Group announced the completion of the previously announced partnership between the two companies and investment by SK Group in Plug Power.

75. SK Group paid Plug Power and acquired Plug Power's common stock one week before the Company disclosed on March 2, 2021 that its financial disclosures were materially false and misleading.

G. Defendant Marsh Sells Nearly Half His Holdings While the Stock Price Was Inflated

76. In the two weeks following the Company's announcements of the SK Group deal, the Company's stock price increased by almost 90%.

77. On January 19, 2021, Defendant Marsh sold 573,268 shares of his personally held Plug Power stock at prices ranging from $62.6504 to $68.3109 per share in a series of seven transactions. Defendant Marsh's sale was purportedly made pursuant to a Rule 10b5-1 trading

plan that was instituted while Defendants issued materially false and misleading financial statements.

78. These sales—which reduced Defendant Marsh's holdings by 43% from 1.322 million shares to 748,680 shares—netted Defendant Marsh proceeds of approximately $37.7 million.

79. In order to effectuate the sale of 466,668 shares or 81% of his total shares sold on January 19, 2021, Defendant Marsh exercised options that would not expire until 2027.

80. Defendant Marsh's decision to exercise his options seven years before their expiration further shows that he knew Plug Power's stock price was did not reflect Plug Power's true financial condition.

H. Plug Power Raises Another $2 Billion from Investors through a Secondary Public Offering at a Price of $65 Per Share Based on Overstated Financial Statements

81. In the week following Defendant Marsh's insider trading sales, Plug Power itself also sought to profit from its artificially inflated stock price.

82. On January 26, 2021, while Plug Power's stock was trading at a 52-week high, Plug Power announced that it was commencing a secondary public offering of its common stock for $1.5 billion.

83. On the same day, the Company increased the amount of shares that it initially planned to offer to 28,000,000 shares of its common stock at a price to the public of $65.00 per share, with up to an additional 4,200,00 shares for the underwriters.

84. The Company issued two press releases on January 26, 2021 concerning the commencement of the secondary public offering and its pricing. Both press releases directed investors to rely on the prospectus related to the offering, as well as the Company's previous financial statements incorporated therein as filed with the SEC.

85. On January 28, 2021, Plug Power filed a prospectus pursuant to Rule 424(b)(2), in connection with the Shelf Registration Statement, offering 28,000,000 shares of its common stock at a price to the public of $65.00 per share, with up to an additional 4,200,00 shares for the underwriters (the "January Prospectus").

86. Among other things, the January Prospectus disclosed a summary of selected consolidated financial data containing key metrics for the Company. This included financial data for the fiscal years of 2017, 2018 and 2019 as well as unaudited financial data for the nine months ended September 30, 2020.

87. In connection with FY2017, the January Prospectus stated that the Company netted a gross (loss) profit of ($28.09) million and incurred $28.69 million in research and development expenses.

88. In connection with FY2018, the January Prospectus stated that the Company netted a gross profit of $2.62 million and incurred $27.71 million in costs related to fuel delivered to customers and $33.91 million in research and development expenses.

89. In connection with FY2019, the January Prospectus stated that the Company netted a gross profit of $27.97 million and incurred $36.36 million in costs related to fuel delivered to customers and $33.68 million in research and development expenses.

90. In connection with the nine months ended September 30, 2020, the January Prospectus that the Company netted a gross (loss) profit and operating (loss) income of ($.69) million and ($79.77) million, respectively, and incurred $4.31 million in costs related to provision for loss contracts related to service, $32.27 million in costs related to fuel delivered to customers, and $32.13 million in research and development expenses.

91. The January Prospectus also incorporated by reference the Annual Report on

Form 10-K for FY2019, which utilized the consolidated statements of operations data for the years ended December 31, 2019, 2018 and 2017 and the balance sheet data as of December 31, 2019 and 2018, and the Quarterly Reports on Form 10-Q for the first three quarters of FY2020. All of these reports contain the same financial data detailed in the aforementioned summary of selected consolidated financial data.

92. On February 9, 2021, Plug Power announced the completion of its previously announced upsized offering of 32,200,000 shares at $65 per share with net proceeds in excess of $2 billion. This transaction signified the largest bought deal in the cleantech sector and the third largest follow-on primary block trade with Morgan Stanley as a sole bookrunner in any market sector historically, as well as the most lucrative capital raise in the Company's 24-year history.

93. The Proceeds announced on February 9, 2021 together with the final closing of SK Group's investment in the Company on February 25, 2021 tripled the Company's total cash balance to over $5 billion.

94. Analysts underscored the importance of this sizeable cash balance to Plug Power's growth and diversification. For example, a January 26, 2021 J.P. Morgan report underscored that Plug Power's "…story keeps getting better, PLUG capitalizing on its leadership position in Hydrogen energy and mobility solutions by nailing down customers and partners that expand the TAM [Total Available Market], improve visibility and de-risk execution. The firm is also capitalizing on its soaring market cap to issue shares, building a balance sheet that will permit the company to execute its growth strategy with confidence."

I. Plug Power Restates Its Financial Results Touted to Investors during the Class Period

95. On March 2, 2021, before the market opened, Plug Power filed a Notification of Late Filing with the SEC stating that it could not timely file its Annual Report on Form 10-K for

FY2020 (the "2020 Form 10-K") because the Company was completing a "review and assessment of the treatment **of certain costs with regards to classification between Research and Development versus Costs of Goods Sold**, the recoverability of right of use assets associated with certain leases, and certain internal controls over these and other areas." (Emphasis added). The Company stated that "[i]t is possible that one or more of these items may result in charges or adjustments to current and/or prior period financial statements" and expected "significant changes" from its previous financial reporting for the fourth quarter of FY2020 and full year FY2019.

96. After the close of trading on March 16, 2021, Plug Power issued a press release announcing that the Company needed to restate its prior financial results for FY2018 and FY2019 and quarterly filings for 2019 and 2020 ("Previously Issued Financial Statements"). Specifically, the Company stated:

> In consultation with KPMG LLP, the Company's independent registered public accounting firm, management and the Audit Committee of Plug Power's Board of Directors determined that the Company's Prior Period Financial Statements need to be restated due to errors in accounting primarily related to several non-cash items, including:
>
> - The reported book value of right of use assets and related finance obligations;
> - **Loss accruals for certain service contracts**;
> - The impairment of certain long-lived assets; and
> - **The classification of certain costs, resulting in decrease in research and development expense and a corresponding increase in cost of revenue**.
>
> ….

(Emphasis added).

97. The press release added that the Company would not be able to file its 2020 Form 10-K by the March 16, 2021 deadline but was endeavoring to finalize the restatement of the Previously Issued Financial Statements and file its 2020 Form 10-K as soon as possible.

98. On the same day, Plug Power filed with the SEC a Current Report on Form 8-K which stated that the Company's Previously Issued Financial Statements for FY2018, FY 2019, and all quarters reported in 2020 could not be relied upon and that the Company expected to revise the accounting for the Previously Issued Financial Statements and disclose in its 2020 Form 10-K a material weakness in its internal controls over financial reporting.

99. Analysts immediately expressed concerns about the Company's need for restatements as far back as 2018.

100. On March 17, 2021, the next trading day following Plug Power's announcement that the Company needed to restate its certain of its financial results, Plug Power common stock fell $3.35 per share, or approximately 7.8%, on unusually heavy volume.

101. Analysts expressed concerns about the Company's need for restatements as far back as 2018.

102. In a report issued during trading on March 18, 2021, analysts from Barclays reviewed the causes for Plug Power's restatements and the potential significance of each accounting revision. Specifically, Barclays analysts were "most crucially" concerned with "the degree to which past margin for fuel cell products are lower (if a lot of R&D moves to Cost of Rev.)."

103. In the same report, Barclays analysts posited that Plug Power's overstated research and development expenses could have been a ploy by Defendants to inflate margins, stating "**[s]imply put, that management wanted to show higher margins on the core hardware, the fuel cells.** It has been quite impressive that margins stabilized in the mid-30% range (off of gross billings), from the 20-25% range before 2018." (Emphasis added).

104. Additionally, Barclays analysts disagreed with Defendants' representation that the Company's revisions to R&D costs would not affect Plug Power's forecasts, stating:

> "[P]rior expectation that fuel cells were already in the mid-30% margin range dramatically mitigated execution risk for the 2024 and overall guidance. We only needed to assume 35-40% margins, or around a 500bps increase to execute on the needed margin targets for that line, and be on track with the 2024 AEBITDA margin target of 20%. **If margins are close to 25% today (around ¼ to ½ shift of R&D), management's targets could remain, but the execution risk is much greater**, reflecting a necessary 1,000bps+ uplift for the next three years in GM (based on our calculations) in order to reach margin guidance" (Emphasis added).

105. On May 14, 2021, before the market opened, Plug Power announced that the Company had completed the restatement of its Previously Issued Financial Statements and filed its 2020 Form 10-K with the SEC. The key areas addressed were primarily the same as those detailed in the Company's March 16, 2021 press release.

106. Collectively, the adjustments as part of the restatement and finalization of the 2020 Form 10-K decreased earnings per share ("EPS") by ($.10) for 2020.

107. In 2020, EPS was negatively impacted stemming from one-time non-cash charges associated with $35 million in loss accrual provisions and a $6.4 million long-lived asset impairment.

108. According to the 2020 Form 10-K, the restatement of the Previously Issued Financial Statements corrected the following:

> (a) $112.7 million overstatement of the right of use assets related to operating lease liabilities at December 31, 2019, due to the Company incorrectly calculating the operating lease liability associated with certain sale/ leaseback transactions;
>
> (b) ($1.6) million understatement of benefit for loss contracts related to service on the Statement of operations for the year ended December 31, 2019, inclusive of the partial release of the 2018 accrual to the cost of services performed on fuel cells and related infrastructure, and a $5.3 million understatement of the provision for loss contracts for the year ended December 31, 2018, due to the Company not properly estimating the loss accrual related to extended maintenance contracts;

> (c) **$19.5 million and $21.2 million, overstatement of gross profit (loss) for the years ended December 31, 2019 and 2018, respectively, due to the Company not properly presenting certain costs related to research and development activities and cost of revenues;**
>
> (d) $1.8 million recording of a deemed dividend for certain conversions of the Company's Series e Convertible Preferred Stock settled in common stock during the year ended December 31, 2019;
>
> (e) The Company determined that the amount recorded to accumulated deficit as of January 1, 2018 for a cumulative adjustment of approximately $3.4 million was the correction of an error in prior lease accounting. as a result of the correction of this error, the $3.4 million charge to accumulated deficit is now reflected in the beginning accumulated deficit for the 12 months ended December 31, 2018; and
>
> (f) $5.3 million understatement of bonus expense and related payroll taxes for the three months ended September 30, 2020, due to the Company not properly estimating bonus expense for the nine-month period ended September 30, 2020.

(Emphasis added).

109. In correcting its misclassification of research and development expenses, this resulted in a corresponding increase in the Company's cost of revenue. The specific types of cost of revenue that were affected by this correction included sales of fuel cell systems and related infrastructure, services performed on fuel cell systems and related infrastructure, Power Purchase Agreements, and, notably, fuel delivered to customers.

110. In addition to the fiscal years 2018 and 2019, the Company further revealed in its 2020 Form 10-K that it had improperly presented research and development expenses that should have been classified as costs of revenue for the fiscal years 2016 and 2017 and first three quarters of FY2020. Specifically, for FY2016, the Company misclassified $8.9 million. For FY2017, the Company misclassified $15.2 million. For the first quarter of FY2020, the Company misclassified $5.5 million. For the second quarter of FY2020, the Company misclassified $4.9 million. For the third quarter of FY2020, the Company misclassified $5.5 million.

111. In total, for fiscal years 2016-2019 and the first three quarters of FY2020, Plug Power misclassified research and development expenses by an aggregate $80.7 million or 53.2% of the originally reported figures:

Research and Development Expenses (In Millions) („Orig." = Originally Reported Amount, "Restated" = Amount Misclassified)									
FY2020 (Q1-Q3)		**FY2019**		**FY2018**		**FY2017**		**FY2016**	
Orig.	Restated	Orig.	Restated	Orig.	Restated	Orig.	Restated	Orig.	Restated
$32.1	$15.9	$33.7	$19.5	33.9	$21.2	$28.69	$15.2	$21.18	$8.9
	49.5%		**57.9%**		**62.5%**		**53%**		**42%**

112. Much of these research and development expenses were reclassified as a very specific type of cost of revenue—cost of fuel delivered to customers. As part of the restatement, the Company increased the cost of fuel delivered to customers by the following amounts: for FY2018, $8.3 million; for FY2019, $8.9 million; for the first quarter of FY2020, $2.2 million; for the second quarter of FY2020, $2.0 million; and for the third quarter of FY2020, $2.8 million.

113. In correcting its misclassification of cost of revenue as research and development expenses, Plug Power accordingly reduced its previously reported gross profit for the fiscal years 2016-2019 and the first three quarters of FY2020.

114. In its 2020 Form 10-K, the Company made the following corrections to its gross (loss) profits:

Gross (Loss) Profit for FY 2016- 2020Q3 (In Millions)							
	2020 Q3	**2020 Q2**	**2020 Q1**	**2019**	**2018**	**2017**	**2016**
Originally Stated	($1.29)	$5.08	($4.47)	$27.97	$2.62	($28.09)	$3.95
Restated	($28.58)	($.02)	($9.70)	$10.65	($26.00)	($43.30)	($4.91)

115. This reclassification, along with other adjustments, expunged almost all of the Company's gross profits since 2016, and caused nearly every reporting period to report large gross losses except for FY2019 where the gross profit reported was cut by over 60%.

116. Separately, the 2020 Form 10-K also elaborated on the Company's improper assumptions in connection with loss accruals for certain service contacts, a type of the Company's cost of revenue. Specifically, the Company identified the following flaw in its recording of loss accruals:

> The Company recorded a provision for loss accrual during 2020 of $35.5 million, an increase of $35.9 million over the net benefit for loss contracts related to service recorded in 2019 of $394 thousand (as restated). The increase in the provision for loss accrual during 2020 was driven primarily by an increase in estimated projected costs to service units and an increase in the number of service contracts during 2020. The Company determined during 2020, based on historical experience, that certain cost down initiatives were taking longer to achieve than originally estimated. As a result, the Company increased its estimated projected costs to service fuel cell systems and related infrastructure.
>
> …
>
> The Company did not properly estimate the loss accrual related to its extended maintenance contracts. As a result of the error in classification of research and development costs discussed below, the Company did not consider all relevant historical costs when estimating future service costs when determining whether a loss accrual for extended maintenance contracts was necessary. Additionally, the Company did not consider the service costs related to hydrogen infrastructure, nor the provision for warrants, when estimating the need for a loss accrual on extended maintenance contracts. When properly considering these costs, additional loss accruals for extended maintenance contracts were required to be

> recorded. When properly considering these costs, additional loss accruals for extended maintenance contracts were required to be recorded. The corrections resulted in a ($1.6) million benefit for loss accrual for the year ended December 31, 2019, inclusive of the partial release of the 2018 loss accrual, and a provision for loss accrual of $5.3 million for the year ended December 31, 2018.

117. The 2020 Form 10-K further revealed that most of the $35.5 million loss accrual for FY2020 was generated by the Company understating the provision for loss contracts related to service during the third quarter of that year by $20.8 million.[3] This loss accrual was understated because the Company misclassified fuel delivered to customers as a research and development expense instead of as a cost of revenue. This directly caused the Company's operating income to decrease by $20.8 million.

118. The 2020 Form 10-K stated that Plug Power's management, including the Individual Defendants, under the oversight of the Company's board of directors, conducted an evaluation of the effectiveness of the Company's internal control over financial accounting. Based on this evaluation, the Company's management concluded that, as of December 31, 2020, the Company's internal control over financial reporting was not effective because of certain material weaknesses. Specifically, Company's management identified the following deficiency in internal control over financial reporting as of December 31, 2020:

> The Company did not maintain a sufficient complement of trained, knowledgeable resources to execute their responsibilities with respect to internal control over financial reporting for certain financial statement accounts and disclosures. As a consequence, the Company did not conduct an effective risk assessment process that was responsive to changes in the Company's operating environment and did not design and implement effective process-level controls activities in the following areas: presentation of operating expenses; accounting for lease-related transactions; identification and evaluation of impairment, loss-contract accrual, certain expense accruals, and deemed dividends; and timely identification of adjustments to physical inventory in interim periods.

119. The 2020 Form 10-K further provided that "these deficiencies resulted in material

[3] For the nine months ended September 30, 2020, the Company overstated the provision for loss contracts related to service by $21.6 million.

misstatements that were identified and corrected in the consolidated financial statements as of and for each of the three years in the period ended December 31, 2020 and other historical periods…."

120. The 2020 Form 10-K also detailed the Company's financial results for FY2020. The Company stated that the Company's research and development expenses were $27.85 million, provision for loss contracts related to service was $35.47 million, fuel delivered to customers was $61.82 million for this cost of revenue, gross (loss) profit was ($469.42) million, and operating (loss) income was ($584.20) million.

121. The 2020 Form 10-K was signed by the Individual Defendants.

122. On May 14, 2021, after the details of Plug Power's restatement were revealed, Plug Power's common stock increased $2.62, or approximately 12%, indicating that the market had already priced in the impact of the Company's restatement.

123. On May 16, 2021, Barclays analysts issued a report stating that their concerns regarding R&D expenses and their impact on the Company's gross margin had been realized. Specifically, the report stated:

> [O]ur biggest concern was that sizable R&D shifts to COGS, rendering realized GM much lower and shifting 2024 AEBITDA guidance into more of an aspirational position rather than reliable targets from today's vantage point. This proved true – PLUG's run rate adj. GM is closer to mid-teens vs. mid-20s implied prior.

124. Barclays analysts were perplexed by the reclassification of fuel costs, a line item specifically broken out in the Company's financial statements, from research and development expenses to cost of goods sold, stating the change "**surprised us, as it's unclear how fuel could've ended up erroneously in R&D.**" (Emphasis added).

125. Barclays' May 16, 2021 analyst report further stated that the amount of the

reclassification of service and fuel costs reclassified from R&D to cost of goods sold "does reflect a level closer to a severe downside case … [and] raises fresh concerns."

126. The same report notes that Barclays is "[q]uestioning what margins look like now, near and long term" and that their outlook for Plug Power moving forward is negatively impacted due to the downward revision to gross margin caused by the Company's restatements, highlighting that "[i[n the past we had pointed to strong gross margin across select business segments as indicators of PLUG's R&D efforts paying off, specifically fuel cells. **This proved untrue** and there is now increased execution risk and lesser clarify on the potential for a dramatic margin improvement narrative playing out." (Emphasis added).

V. DEFENDANTS' FALSE STATEMENTS OF MATERIAL FACTS

A. The November 9, 2020 False Statements

127. On November 9, 2020, Plug Power reported its third quarter 2020 financial results in a letter to shareholders signed by the Individual Defendants, which was Posted on Plug Power's website and attached to a Current Report on Form 8-K filed with the SEC on that same day (the "3Q2020 Letter to Shareholders"). Therein, the Company falsely stated, in relevant part: "We … report that the proforma Adjusted EBITDA margin in Q3 2020 of 19%, …."

128. The 3Q2020 Letter to Shareholders falsely stated that the Company had achieved a proforma Adjusted EBITDA of $24 million during that quarter.

129. On November 9, 2020, Plug Power filed its Quarterly Report on Form 10-Q for the third quarter of FY2020 ("3Q2020 Form 10-Q"), which was signed by the Individual Defendants.

130. The 3Q2020 Form 10-Q falsely stated that research and development expenses were $11.96 million.

131. The 3Q2020 Form 10-Q falsely stated that the Company's provision for loss

contracts related to service was $4.31 million for this cost of revenue.

132. The 3Q2020 Form 10-Q falsely stated that the Company incurred a gross (loss) profit of ($1.29) million and an operating (loss) income of ($27.53) million.

133. The financial metrics represented in ¶¶ 128-132 were materially false and misleading when made because Defendants knew or recklessly disregarded that (a) material amounts of the Company's fuel delivery costs were being reported as research and development expenses in violation of the Company's accounting policy and thereby inflating reported gross profits and (b) booking fuel delivery costs as research and development expenses allowed the Company to understate the loss accrual related to its extended maintenance contracts thereby inflating reported gross profits and EBITDA. (*See* ¶¶ 163-198; ¶¶ 110-117). The Company later admitted the financial metrics in ¶¶ 128-132 were materially false when restating these metrics. (*See* ¶¶ 110-117).

134. The 3Q2020 Form 10-Q also falsely claimed that the Company's "disclosure controls and procedures are effective[.]" In particular, the 3Q2020 Form 10-Q stated, in relevant part:

> **Item 4 — Controls and Procedures**
>
> (a) Disclosure Controls and Procedures
>
> The chief executive officer and chief financial officer, based on their evaluation of disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) as of the end of the period covered by this Quarterly Report on Form 10-Q, have concluded that **the Company's disclosure controls and procedures are effective** for ensuring that information required to be disclosed in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in filed or submitted reports is accumulated and communicated to the Company's management, including its principal executive officer and principal financial officer as appropriate, to allow timely decisions

regarding required disclosure.

Emphasis added.

135. The representations that the Company's disclosure controls and procedures were effective were materially false and misleading when made because Defendants knew or recklessly disregarded that (a) material amounts of the Company's fuel delivery costs were being reported as research and development expenses in violation of the Company's accounting policy and thereby inflating reported gross profits and (b) booking fuel delivery costs as research and development expenses allowed the Company to understate the loss accrual related to its extended maintenance contracts thereby inflating reported gross profits and EBITDA. (*See* ¶¶ 163-198; ¶¶ 110-117). The Company later admitted its financial reporting was materially false when restating its financial results. (*See* ¶¶ 110-117). Defendants also admitted that there were material weaknesses in its internal controls over financial reporting, *inter alia*, specifically that Plug Power "did not maintain a sufficient complement of trained, knowledgeable resources to execute their responsibilities with respect to internal control over financial reporting for certain financial statement accounts and disclosures" and "[a]s a consequence, the Company did not conduct an effective risk assessment process that was responsive to changes in the Company's operating environment and did not design and implement effective process-level controls activities" in connection with "presentation of operating expenses" and "loss-contract accrual" (¶ 118); and the Company admitted that, as a result of the foregoing, it could not timely file its Form 10-K and needed to restate its Previously Issued Financial Statements, including the quarterly report for the third quarter of FY2020 (¶¶ 96-97).

B. The November 18, 2020 False Statements

136. On November 18, 2020, Plug Power filed the November Prospectus with the SEC. Therein, the Defendants provided investors with a summary of selected consolidated financial data as well as incorporated by reference financial data from the Annual Report on Form 10-K for FY2019 and the Quarterly Reports on Form 10-Q for the first three quarters of FY2020. This included financial data for the fiscal years of 2017, 2018 and 2019 as well as financial data for the nine months ended September 30, 2020.

137. The November Prospectus falsely stated that for FY2017, the Company netted a gross (loss) profit of ($28.09) million and incurred $28.69 million in research and development expenses.

138. The November Prospectus falsely stated that for FY2018, the Company netted a gross profit of $2.62 million and incurred $27.71 million in costs related to fuel delivered to customers and $33.91 million in research and development expenses.

139. The November Prospectus falsely stated that for FY2019, the Company netted a gross profit of $27.97 million and incurred $36.36 million in costs related to fuel delivered to customers and $33.68 million in research and development expenses.

140. The November Prospectus falsely stated that for the nine months ended September 30, 2020, the Company netted a gross (loss) profit and operating (loss) income of ($.69) million and ($79.77) million, respectively, and incurred $4.31 million in costs related to provision for loss contracts related to service, $32.27 million in costs related to fuel delivered to customers, and $32.13 million in research and development expenses.

141. The financial metrics represented in ¶¶ 59-63 were materially false and misleading when made because Defendants knew or recklessly disregarded that (a) material amounts of the Company's fuel delivery costs were being reported as research and development

expenses in violation of the Company's accounting policy and thereby inflating reported gross profits and (b) booking fuel delivery costs as research and development expenses allowed the Company to understate the loss accrual related to its extended maintenance contracts thereby inflating reported gross profits and operating income. (*See* ¶¶ 163-198; ¶¶ 107-117). The Company later admitted the financial metrics in ¶¶ 59-63 were materially false when restating these metrics. (*See* ¶¶ 107-117).

C. The January 28, 2021 False Statements

142. On January 28, 2021, Plug Power filed the January Prospectus. Therein, the Defendants disclosed, in relevant part, a summary of selected consolidated financial data as well as incorporated by reference financial data from the Annual Report on Form 10-K for FY2019 and the Quarterly Reports on Form 10-Q for the first three quarters of FY2020. This included financial data for the fiscal years of 2017, 2018 and 2019 as well as unaudited financial data for the nine months ended September 30, 2020.

143. The January Prospectus falsely stated that for FY2017, the Company netted a gross (loss) profit of ($28.09) million and incurred $28.69 million in research and development expenses.

144. The January Prospectus falsely stated that for FY2018, the Company netted a gross profit of $2.62 million and incurred $27.71 million in costs related to fuel delivered to customers and $33.91 million in research and development expenses.

145. The January Prospectus falsely stated that for FY2019, the Company netted a gross profit of $27.97 million and incurred $36.36 million in costs related to fuel delivered to customers and $33.68 million in research and development expenses.

146. The January Prospectus falsely stated that for the nine months ended September 30, 2020, the Company netted a gross (loss) profit and operating (loss) income of ($.69) million

and ($79.77) million, respectively, and incurred $4.31 million in costs related to provision for loss contracts related to service, $32.27 million in costs related to fuel delivered to customers, and $32.13 million in research and development expenses.

147. The financial metrics represented in ¶¶ 87-91 were materially false and misleading when made because Defendants knew or recklessly disregarded that (a) material amounts of the Company's fuel delivery costs were being reported as research and development expenses in violation of the Company's accounting policy and thereby inflating reported gross profits and (b) booking fuel delivery costs as research and development expenses allowed the Company to understate the loss accrual related to its extended maintenance contracts thereby inflating reported gross profits and operating income. (*See* ¶¶ 163-198; ¶¶ 110-117). The Company later admitted the financial metrics in ¶¶ 87-91 were materially false when restating these metrics. (*See* ¶¶ 107-117).

D. The February 25, 2021 False Statements

148. On February 25, 2021, Plug Power released its fourth quarter and full year 2020 financial results in a letter to shareholders, signed by the Individual Defendants, which was Posted on Plug Power's website and attached to a Current Report on Form 8-K filed with the SEC on that same day (the "4Q2020 Letter to Shareholders").

149. The 4Q2020 Letter to Shareholders falsely stated that the Company's research and development expenses were $18.89 million and $51.02 million for the fourth quarter of FY2020 and the entirety of FY2020, respectively.

150. The 4Q2020 Letter to Shareholders falsely stated that the Company's provision for loss contracts related to service was $0.7 million and $5.01 million for this cost of revenue for the fourth quarter of FY2020 and the entirety of FY2020, respectively.

151. The 4Q2020 Letter to Shareholders falsely stated that the Company's fuel

delivered to customers was \$18.46 million and \$50.73 million for this cost of revenue for the fourth quarter of FY2020 and the entirety of FY2020, respectively.

152. The 4Q2020 Letter to Shareholders falsely stated that the Company incurred a gross (loss) profit of (\$422.69) million and (\$423.34) million for the fourth quarter of FY2020 and the entirety of FY2020, respectively.

153. The 4Q2020 Letter to Shareholders falsely stated that the Company incurred an operating (loss) income of (\$470.5) million and (\$550.26) million for the fourth quarter of FY2020 and the entirety of FY2020, respectively.

154. The financial metrics represented in ¶¶ 149-153 were materially false and misleading when made because Defendants knew or recklessly disregarded that (a) material amounts of the Company's fuel delivery costs were being reported as research and development expenses in violation of the Company's accounting policy and thereby inflating reported gross profits and (b) booking fuel delivery costs as research and development expenses allowed the Company to understate the loss accrual related to its extended maintenance contracts thereby inflating reported gross profits and operating income. (*See* ¶¶ 163-198; ¶ 120). The Company's later filed 2020 Form 10-K also revealed that the financial metrics in ¶¶ 149-153 were materially false when restating these metrics. (*See* ¶ 120).

VI. THE TRUTH EMERGES

155. The first disclosure to investors that Defendants issued materially false and misleading statements was on March 2, 2021, before the market opened, when Plug Power filed a Notification of Late Filing with the SEC stating that it could not timely file its Annual Report on Form 10-K for FY2020 (the "2020 Form 10-K") because the Company was completing a "review and assessment of the treatment **of certain costs with regards to classification between research and development versus costs of goods sold**, the recoverability of right of use assets

associated with certain leases, and certain internal controls over these and other areas." (Emphasis added). The Company stated that "[i]t is possible that one or more of these items may result in charges or adjustments to current and/or prior period financial statements" and expected "significant changes" from its previous financial reporting for the fourth quarter of FY2020 and full year FY2019. Specifically, the Company stated:

> For the year ended December 31, 2020, Plug Power Inc. (the "Company") became a large accelerated filer for the first time and, as a result, the Company has a shortened filing deadline of 60 days rather than 75 days to file its Annual Report on Form 10-K for the year ended December 31, 2020 (the "Form 10-K"). The Company requires additional time to complete the procedures relating to its year end reporting process, including the completion of the Company's financial statements and procedures relating to management's assessment of the effectiveness of internal controls, and the Company is therefore unable to file the Form 10-K by March 1, 2021, the prescribed filing due date. ***The Company is working diligently to complete the necessary work, including review and assessment of the treatment of certain costs with regards to classification between Research and Development versus Costs of Goods Sold, the recoverability of right of use assets associated with certain leases, and certain internal controls over these and other areas. It is possible that one or more of these items may result in charges or adjustments to current and/or prior period financial statements***. The Company is still evaluating whether any such charges or adjustments would be required and, if required, whether any such charges or adjustments would be material; but any charges, if required, would be non-cash in nature and any such adjustments or charges would not impact the Company's guidance on forward projections. The Company expects to file the Form 10-K within the extension period provided under Rule 12b-25 under the Securities Exchange Act of 1934, as amended.
>
> …
>
> ***The Company expects that the fourth quarter and full year 2020 result of operations to be included in the Form 10-K will reflect significant changes from the fourth quarter and full year 2019***.

(Emphasis added.)

156. On this news, the Company's stock price fell $3.68, or 7%, to close at $48.78 per share on March 2, 2021, on unusually heavy trading volume.

157. The final curative disclosure was after the close of trading on March 16, 2021, when Plug Power issued a press release announcing that the Company needed to restate its prior financial results for FY2018 and FY2019 and quarterly filings for 2019 and 2020 ("Previously Issued Financial Statements"). Specifically, the Company stated:

> In consultation with KPMG LLP, the Company's independent registered public accounting firm, management and the Audit Committee of Plug Power's Board of Directors determined that the Company's Prior Period Financial Statements need to be restated due to errors in accounting primarily related to several non-cash items, including:
>
> - The reported book value of right of use assets and related finance obligations;
> - **Loss accruals for certain service contracts**;
> - The impairment of certain long-lived assets; and
> - **The classification of certain costs, resulting in decrease in research and development expense and a corresponding increase in cost of revenue**.
>
> ….

(Emphasis added).

158. The press release added that the Company would not be able to file its 2020 Form 10-K by the March 16, 2021 deadline but was endeavoring to finalize the restatement of the Previously Issued Financial Statements and file its 2020 Form 10-K as soon as possible.

159. On the same day, Plug Power filed with the SEC a Current Report on Form 8-K which stated that the Company's Previously Issued Financial Statements could not be relied upon and that the Company expected to revise the accounting for the Previously Issued Financial Statements and disclose in its 2020 Form 10-K a material weakness in its internal controls over financial reporting. Specifically, the Form 8-K stated:

> **Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review.**
>
> (a) On March 12, 2021, management and the Audit Committee of the Board of

Directors (the "Audit Committee") of the Company, in consultation with KPMG LLP ("KPMG"), the Company's independent registered public accounting firm, determined that the Company's previously issued financial statements as of and for the years ended December 31, 2019 and 2018, and as of and for each of the quarterly periods ended March 31, 2020 and 2019, June 30, 2020 and 2019, and September 30, 2020 and 2019 (collectively, the "Prior Period Financial Statements"), should no longer be relied upon due to errors in accounting primarily relating to (i) the reported book value of right of use assets and related finance obligations ("ROU Accounting"), (ii) loss accruals for certain service contracts, (iii) the impairment of certain long-lived assets, and (iv) the classification of certain expenses previously included in research and development costs ((i) through (iv) collectively, the "Restatement Items"). In addition, the fourth quarter and full year 2020 financial results and related discussion included in the Company's shareholder letter furnished on the Form 8-K filed by the Company on February 25, 2021 should no longer be relied upon.

The Company and the Audit Committee have determined that these accounting changes will require a restatement of the Prior Period Financial Statements.

The revised accounting for the Restatement Items will change how the Company accounts for certain transactions and items, but the revised accounting is not expected to impact cash and cash equivalents or the economics of the Company's existing or future commercial arrangements. The Company currently anticipates that the primary impact of the revised accounting on the Prior Period Financial Statements will include:

• Adjustments on the balance sheets to reduce the carrying amount of certain right of use assets and finance obligations associated with leases;

• An increase in the loss accrual relating to certain service contracts;

• Recognition of non-cash impairment charges relating to certain long-lived assets, including certain right of use assets and certain fixed assets; and

• A reclassification of certain costs resulting in a decrease in Operating expenses - Research and development expense and a corresponding increase in Cost of revenue.

In addition to the above, the Company expects to correct certain less significant items in its previously issued financial statements and other financial data. The Company also expects that its Form 10-K for the year ended December 31, 2020 will disclose a material weakness in its internal controls over financial reporting arising from the Restatement Items. As such, KPMG's report on the Company's internal control over financial reporting as of December 31, 2019 should no longer be relied upon. The changes that will be recorded did not result from a change in published accounting guidance during the relevant time period or any

> override of controls or misconduct, and KPMG has not informed the Audit Committee of any issues related to an override of controls or misconduct.
>
> ….
>
> The Company expects to restate its financial statements as of and for the years ended December 31, 2019 and 2018 and for each of the quarterly periods ended March 31, 2020 and 2019, June 30, 2020 and 2019, September 30, 2020 and 2019, and December 31, 2019, in its Form 10-K for the year ended December 31, 2020. The Company will not be able to file its Form 10-K for the year ended December 31, 2020 by the March 16, 2021 deadline, but it is working diligently to finalize the restated financial statements and to file its Form 10-K as soon as practicable.

(Emphasis added.)

160. On March 17, 2021, the next trading day following Plug Power's announcement that the Company needed to restate its certain of its financial results, Plug Power common stock fell $3.35 per share, or approximately 7.8%, on unusually heavy volume.

161. On March 31, 2021, the press widely reported that President Biden's Infrastructure plan would include subsidies for green energy companies such as Plug Power. This news buoyed the market price of Plug Power common stock throughout the spring of 2021. For example, an April 19, 2021 Evercore ISI report noted that "[g]reen infrastructure is a key component of the U.S. infrastructure package (not included in our tallies) and many new cabinet secretaries have expressed commitments to climate. Not only power generated from renewable technologies such as wind and solar, and battery storage will benefit from green stimulus – other areas such as mobility, energy efficiency, and low-carbon concepts including hydrogen and carbon capture will also receive a major boost."

162. On May 14, 2021, before the market opened, Plug Power announced that the Company had completed the restatement of its Previously Issued Financial Statements and filed its 2020 Form 10-K with the SEC. The restatement was consistent with the key areas previously

addressed in the Company's March 16th press release and coverage of President Biden's Infrastructure plan otherwise buoyed the stock price.

VII. ADDITIONAL ALLEGATIONS OF SCIENTER

163. As alleged herein, Defendants acted with scienter in that they knew, or recklessly disregarded, that the public documents and statements they issued and disseminated to the investing public in the name of the Company or in their own name during the Class Period were materially false and misleading.

164. Defendants knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements and documents as primary violations of the federal securities laws. Defendants, by virtue of their receipt of information reflecting the true facts regarding Plug Power's accounting for certain of the Company's costs, including but not limited to the misclassification of fuel and service costs as research and development expenses instead of cost of goods sold, underestimating the loss accrual related to extended maintenance contracts, Plug Power's 3Q2020 proforma Adjusted EBITDA results, and Plug Power's profitability, their control over, or receipt or modification of Plug Power's allegedly materially misleading statements, were active and culpable participants in the fraudulent scheme alleged herein.

165. Defendants knew or recklessly disregarded the false and misleading nature of the information that they caused to be disseminated to the investing public. The fraudulent scheme described herein could not have been perpetrated during the Class Period without the knowledge or complicity or, at least, the reckless disregard of the personnel at the highest levels of the Company, including the Individual Defendants.

166. Defendants, because of their positions within Plug Power, made or controlled the contents of the Company's public statements during the Class Period. The Individual Defendants were provided with or had access to the information alleged herein to be false or misleading prior

to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information, the Individual Defendants knew or recklessly disregarded that the adverse facts specified herein had not be disclosed to and were being concealed from the public and that the positive representations that were being made were materially false and misleading. As a result, the Individual Defendants are responsible for the accuracy of Plug Power's corporate statements and are therefore responsible and liable for the representations contained therein.

167. The magnitude and impact of Plug Power's restatement of its financials dating back to 2016 are indicative of Defendants' scienter. (*See* ¶¶ 105-120). For example, Defendants wrongly classified over half the research and development expenses as fuel delivery costs. (S*ee* ¶ 111). Moreover, the restated fuel delivery costs were so high that the Company's restatement showed a gross loss for FY2018 and the second quarter of FY2020 instead of a gain, and the losses for the first and third quarters for FY2020 became larger gross losses by significant multiples. (*See* ¶ 114). Finally, the Company's earnings were also materially impacted as the margins on Plug Power's fuel cells were lower than represented and pushed earnings further into negative territory. (*See* ¶ 106).

A. The Fraud Impacted Plug Power's Core Operations

168. Defendants' false and misleading statements concern critical aspects of Plug Power's core operations. Plug Power's business is focused on providing hydrogen fuel cells and fuel to its customers.

169. On March 16, 2021, Plug Power announced that it needed to restate certain of the Company's financial statements due to accounting misclassifications, including the misclassification of cost of goods sold as research and development expenses.

170. Analysts from Barclays noted the importance of Plug Power's adjustments to

research and development expenses. In a March 18, 2021 report, Barclays surmised that these misclassifications occurred because "management wanted to show higher margins on the **core hardware, the fuel cells."** (Emphasis added).

171. The classification of fuel delivery as a research and development expense had no explanation but for fraud or severe recklessness. On May 16, 2021, after the announcement of the results of Plug Power's restatement, an analyst from Barclays was perplexed by the adjustments to research and development expenses caused by the misclassification of hydrogen fuel, the bedrock of Plug Power's business, stating "[t]he reclassification of R&D to fuel COGS surprised us, as it's unclear how fuel could've ended up erroneously in R&D."

172. In the same May 16, 2021 report, Barclays analysts noted that due to the revisions they cannot render positive EBITDA for 2020 or 2021, no matter the add-backs attempted by the Company. Additionally, Barclays noted that they had "pointed to strong gross margins … as indicators of PLUG's R&D efforts paying off, specifically fuel cells" however, "[t]his proved untrue" and put Plug Power's long-term profitability goals at risk.

B. Defendants Were Financially Motivated to Commit Fraud

173. Defendants acted knowingly by misclassifying certain costs from the Company's core business, including fuel, as a research and development expense in order to mislead investors regarding Plug Power's profitability.

174. Defendants were motivated to materially misrepresent Plug Power's financial statements in order to generate financing through partnership agreements and secondary public offerings needed to execute the Company's growth strategy and to finance the Company's HFC business.

175. On November 9, 2020, Plug Power reported that the Company's adjusted EBITDA margin for the third quarter of FY2020 was 19%, "approaching our target Adjusted

EBITDA margin of 20% by 2024." Shortly following this announcement that the Company was close to delivering its long-term margin target, Plug Power was able to obtain a significant amount of investment capital.

176. This reported progress was significant because analysts were uncertain on how to value alternative energy companies, like Plug Power. In a November 10, 2020 report, however, a Barclays analyst stated that, despite the opaqueness in the industry, he did not want to bet against Plug Power since "2024 [EBITDA] targets *are* on track." (Emphasis in original).

177. On January 6, 2021, Barclays issued another report stating that "[i]t's tricky to pick the right market share that fairly approximates PLUG's Blue Sky path" given the number of competitors in the fuel cell space, many of which are further ahead in key areas like trucks and buses. Later that same day, Plug Power announced its partnership with SK Group. As part of the partnership, SK Group invested $1.5 billion in Plug Power, with no restrictions on the capital's use.

178. On January 26, 2021, during a business update conference call, Plug Power once again provided forecasts for the upcoming year, similar to its business update conference call on January 30, 2020. Specifically, Defendant Marsh stated that "with our strong bookings, we had been able to up our guidance for 2021 [for gross billings] to $475 million." However, unlike the business update from the previous year, Plug Power omitted a financial target for its adjusted EBITDA for 2021. This resulted in an analyst inquiring Defendant Marsh about such guidance:

> **Question**:
>
> Great. Great. No, very helpful. And one last one for me, and I'll jump in the queue. Andy, can you provide EBITDA guidance for '21 and '24? We have the old '24 number, but I'm sure that's stated now.

Answer:

Yes. Yes. I would keep the '24 number in that 20% range. And '21 is probably more geared towards focusing on how do we increase gross margins more rapidly. We view '21 as an investment year, obviously. And so when we talk at the end of February, and Paul has everything lined up, we'll be happy to share those numbers.

179. On the same day, on the heels of raising the Company's 2021 billings targets, Plug Power announced that it would be commencing a secondary offering with the price of its common stock near its then all-time high. On the same day, following the announcement of the secondary offering, J.P. Morgan issued a report highlighting the importance of Plug Power's new capital in effectuating the Company's growth strategy. For example, in the report, a J.P. Morgan analyst wrote "[a] good story keeps getting better, with PLUG capitalizing on its leadership position in Hydrogen energy…building a balance sheet that will permit the company to execute its growth strategy with confidence... [Plug Power's equity offering] strengthens PLUG's already-formidable leadership position in the Hydrogen space…[and] helps de-risk execution in our view."

180. On February 9, 2021, Plug Power announced the completion of its secondary public offering, netting proceeds in excess of $2 billion—the most lucrative capital raise in the Company's 24-year history.

181. On February 25, 2021, during Plug Power's earnings call for the fourth quarter of FY2020, the Company again did not provide any information on its adjusted EBITDA for 2020 or guidance for 2021 despite promising to do so during the business update conference call on January 26, 2021. This led to the same analyst asking Defendant Marsh for this information; however, Defendant Marsh opted to neither provide this data nor an explanation for its omission:

Question:

That's very helpful. And Paul and Andy, you both discussed margin expansion. I don't see adjusted EBITDA guidance or reconciliation in the investor letter. Is the

> metric no longer going to be provided? What would a general range look like for '21 and even an update on the 2024 from the $1.7 billion?
>
> **Answer:**
>
> So I think during the call, for '21, and Paul, I'm going to let you jump in after I did. I mean we're targeting -- revenue and gross billings almost now are equal, Moses, with the acceleration of the warrants. So we're looking at $475 million revenue at margins in the high teens for gross margins, and expense is about 30% higher than the run rate of last year. Paul [Middleton], would you like to add to that?

182. Defendant Middleton did not add to Defendant Marsh's answer on this issue. Defendants' refusal to disclose the Company's adjusted EBITDA guidance, as they had routinely done in the past, suggests Defendants knew that KPMG, the Company's independent registered public accounting firm, had identified accounting issues that would negatively impact the Company's guidance and Defendants wanted to conceal it from the market.

183. Accordingly, Defendants' motivation to mispresent the Company's profitability in order to attract the investment capital necessary to execute Plug Power's growth strategy is indicative that Defendants acted with scienter.

C. Defendants' Insider Stock Sales Are Indicative of Scienter

184. Defendants Marsh and Middleton both sold Plug Power stock during the Class Period to take advantage of Plug Power's artificially inflated stock price.

185. On December 24, 2020, Defendant Middleton sold 216,667 shares of his personal held Plug Power stock for $35.1299 per share. This sale netted Defendant Middleton proceeds of approximately $7.6 million.

186. Defendant Middleton's base salary in 2020 was $387,188. Accordingly, the $7.6 million generated by this sale were material.

187. Defendant Middleton's sale was suspicious in timing. Defendant Middleton's December 24, 2020 sale was made pursuant to a 10b5-1 trading plan that was established just

three months earlier in September 2020. The sale was also suspicious because to effectuate the sale, Defendant Middleton exercised options that were not due to expire until 2028 and 2029 – eight to nine years before their expiration. Defendant Middleton's decision to exercise his options eight to nine years before their expiration further shows that he knew Plug Power's stock price was did not reflect Plug Power's true financial condition.

188. On January 19, 2021, Defendant Marsh sold 573,268 shares of his personally held Plug Power stock at prices ranging from $62.6504 to $68.3109 per share in a series of seven transactions. Defendant Marsh's sale was purportedly made pursuant to a Rule 10b5-1 trading plan that was instituted while Defendants issued materially false and misleading financial statements. These sales—which reduced Defendant Marsh's holdings by 43% from 1.322 million shares to 748,680 shares—netted Defendant Marsh proceeds of approximately $37.7 million. In order to effectuate the sale of 466,668 shares or 81% of his total shares sold on January 19, 2021, Defendant Marsh exercised options that would not expire until 2027. Defendant Marsh's decision to exercise his options seven years before their expiration further shows that he knew Plug Power's stock price was did not reflect Plug Power's true financial condition.

189. Defendant Marsh's actions indicate that he was likely aware that KPMG had identified Plug Power's accounting scheme prior to selling his stock. As described above, on January 26, 2021, just one week after Defendant Marsh's $37.7 million stock sale, Defendants refused to provide Adjusted EBITDA guidance for 2021 during Plug Power's business update conference call with analysts. The Company had routinely provided full year Adjusted EBITDA guidance during prior years' January business update calls as well as part of its letters to shareholders containing the Company's quarterly financial results throughout 2020. Instead,

Defendant Marsh stated that Plug Power would provide such guidance in February 2021 but ultimately never did.

190. Additionally, as Defendant Marsh's salary for 2020 was $676,442, his gain of approximately $9.8 million by selling prior to the announcement of a potential restatement was material.

191. The timing and quantity of the stock sales by Defendant Marsh were also unusual. Defendant Marsh's sale of 573,268 shares of Plug Power stock occurred at or near the Company's 52-week high stock price and reduced his overall holdings in the Company by 43%.

192. Moreover, similar to Defendant Middleton, Defendant Marsh exercised options that would not expire until 2027 to sell 466,668 shares or 81% of his total shares sold on January 19, 2021. By exercising options approximately 6 years early, especially after Plug Power's stock had increased more than 1500% in the prior 12 months, Defendant Marsh had reason to believe that Plug Power's stock price was worth more at the time than it would be in the future.

193. Defendant Marsh's January 19, 2021 sale was also made pursuant to a 10b5-1 plan, that was in place while the Company issued materially false and misleading financial statements. During 2020, prior to the start of the Class Period but within the restatement period, Defendant Marsh made eight other sales pursuant to a 10b5-1 trading plan that was established just months before the sales on March 17, 2020, generating proceeds of approximately $23.7 million. Nearly all of the stock sold by Defendant Marsh pursuant to this trading plan involved options that were not set to expire for four years or more.

194. Accordingly, the fact that the Individual Defendants profited substantially from Plug Power's inflated stock price shows that they acted with scienter.

D. Defendants' SOX Certifications Are Indicative of Scienter

195. Defendants also repeatedly represented to investors that Plug Power's financial

statements were adequate and that they were complying with their obligations under the Sarbanes-Oxley Act ("SOX"). Defendants made these representations notwithstanding the fact that they knew that Plug Power was not properly accounting for the Company's research and development expenses.

196. For example, Defendants represented that "the financial statements and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report."

197. The fact that the Defendants reviewed Plug Power's financial reports is highly indicative that they reviewed the relevant accounting standards at issue but purposefully ignored them.

198. Accordingly, Defendants' disclosure that they regularly reviewed Plug Power's financial statements yet needed to restate the Company's financial statements due to accounting misclassifications indicates that Defendants acted with scienter.

VIII. LOSS CAUSATION/ECONOMIC LOSS

199. During the Class Period, as detailed herein, Plug Power's common stock was artificially inflated due to Defendants' false and misleading public statements. When Defendants' prior misrepresentations were disclosed and became apparent to the market, the price of Plug Power common stock fell as the prior artificial inflation came out.

200. As a result of their purchases of Plug Power common stock during the Class Period, Lead Plaintiff and the other Class members suffered economic loss, *i.e.*, damages, under the federal securities laws.

201. The declines in the price of Plug Power's common stock after the corrective disclosures on March 2, 2021, and March 16, 2021 were a direct result of Defendants'

misrepresentations being revealed to the market.

202. Defendants' materially false and misleading statements relate to the Company's effectiveness of its internal controls, overstated research and development expenses, understated loss accrual related to certain service contracts, and the material negative impacts those accounting misclassifications had on the Company and its reported profitability.

203. The corrective disclosure on March 2, 2021, revealed that Plug Power would not be timely filing its 2020 Form 10-K because the Company was completing a "review and assessment of the treatment of certain costs with regards to classification between research and development versus Costs of Goods Sold, the recoverability of right of use assets associated with certain leases, and certain internal controls over these and other areas." The Company stated that "[i]t is possible that one or more of these items may result in charges or adjustments to current and/or prior period financial statements."

204. After the adverse March 2, 2021 announcement, the Company's stock price fell $3.68, or 7%, to close at $48.78 per share on March 2, 2021, on unusually heavy trading volume.

205. After the March 2, 2021 partial disclosure, Plug Power common stock remained artificially inflated because Defendants did not fully reveal the extent of the Company's restatement. Specifically, Plug Power concealed that the upcoming restatement impacted not only the Company's FY2019 and certain of its FY2020 financial statements, but also its FY2018 financial statements. Plug Power also concealed the material negative impact the restatements had on the Company's profitability.

206. The corrective disclosure on March 16, 2021, revealed that Plug Power's Previously Issued Financial Statements for FY2018 and FY2019 and its quarterly filings for 2019 and 2020 needed to be restated primarily for reclassification of research and development

expenses, increasing cost of revenue, and underestimating loss accruals for certain service contracts. The corrective disclosure further divulged that the Company's Previously Issued Financial Statements could not be relied upon and that the Company expected to describe in its 2020 Form 10-K a material weakness in its internal controls over financial reporting.

207. On March 17, 2021, the next trading day following Plug Power's announcement that the Company needed to restate its financial results, Plug Power common stock fell $3.35 per share, or approximately 7.8%, on unusually heavy volume.

208. The dramatic decline in the price of Plug Power securities after the corrective disclosures on March 2, 2021 and March 16, 2021 were direct results of Defendants' misrepresentations and omissions being revealed to investors and the market.

209. During the Class Period, the Plug Power common stock traded as high as $75.49 per share, and it traded at $52.46 just prior to the March 2 disclosure. Over the next few months, as the truth continued to emerge, Plug Power's stock price dropped to $21.96 on May 13, 2021, a decline of over 58% since March 1, 2021.

210. The adverse consequences of the Company's disclosures, including the decline in Plug Power's stock price, and the adverse impact of those circumstances on the Company's business going forward, were entirely foreseeable to Defendants at all relevant times. Defendants' conduct, as alleged herein, proximately caused foreseeable losses and damages to Lead Plaintiff and members of the Class.

211. The timing and magnitude of the price decline in Plug Power' stock price negate any inference that the loss suffered by Lead Plaintiff and the other Class members was caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to Defendants' statements. As set forth above, the Company's failure to maintain

effective controls over its financial reporting and the associated accounting misclassifications were not only material but also triggered foreseeable and grave consequences for the Company.

212. Thus, the economic loss, *i.e.*, damages suffered by Lead Plaintiff and the other Class members, was a direct, foreseeable, and proximate result of the fraudulent scheme being revealed to investors and to the market.

213. The market's reaction following Plug Power's false and misleading statement also shows that investors were misled by the Company's misstatements.

214. On November 7, 2020, following the disclosure of Company's materially misleading 3Q2020 financial results, Plug Power common stock increased $1.45, or 7.6% to close at $20.31 on November 7, 2020.

215. On November 18, 2020, following the filing of Company's November Prospectus containing materially misleading financial information, Plug Power common stock increased $0.24 to close at $23.33 on November 18, 2020.

216. On January 28, 2021, following the filing of Company's January Prospectus containing materially misleading financial information, Plug Power common stock increased $0.86 to close at $65.28 on January 28, 2021.

217. On February 25, 2021, following the disclosure of the Company's materially misleading 4Q2020 and FY2020 financial results, Plug Power stock dropped $6.84 to close at $43.34, buoyed from a steeper decline by Defendants' false and misleading statements to the market.

IX. INAPPLICABILITY OF STATUTORY SAFE HARBOR

218. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the materially false and misleading statements alleged in this Complaint. The statements alleged to be false and misleading all relate to historical facts of

existing conditions and were not identified as forward-looking statements. To the extent any of the false statements alleged herein may be characterized as forward-looking, they were not adequately identified as "forward-looking" statements when made and were not accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly "forward-looking" statements. Alternatively, to the extent that the statutory safe harbor would otherwise apply to any statement pleaded herein, Defendants are liable for those false forward-looking statements because, at the time each of those forward-looking statements was made, the speaker knew the statement was false or the statement was unauthorized or approved by an executive officer of Plug Power who knew that those statements were false.

X. PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET

219. Lead Plaintiff is entitled to a presumption of reliance on Defendants' misrepresentations of material facts and omissions pursuant to the fraud-on-the-market doctrine.

220. At all relevant times, the market for Plug Power's common stock was an efficient market for the following reasons, among others:

(a) Plug Power met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient market;

(b) As a regulated issuer, Plug Power filed periodic public reports with the SEC;

(c) Plug Power regularly communicated with public investors via means of established market communication mechanisms, including through regular dissemination of press releases on the nation's newswire services and through other wide-ranging public disclosures, such as communications with the financial press, securities analysts, and other similar reporting services;

(d) Plug Power was followed by numerous securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. These reports were publicly available and entered the public marketplace; and

(e) the market for Plug Power securities promptly digested current information regarding Plug Power from all publicly available sources and reflected such information in Plug Power's share price.

221. All purchasers of Plug Power common stock during the Class Period relied on the same information disseminated by Defendants as reflected in the market price of Plug Power common stock and suffered similar injury through their purchases at artificially inflated prices.

XI. CLASS ACTION ALLEGATIONS

222. Lead Plaintiff brings this action as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all persons and entities that purchased or otherwise acquired Plug Power's common stock during the Class Period, November 9, 2020 through March 16, 2021, inclusive, and were damaged thereby. Excluded from the Class are (a) Defendants; (b) members of the immediate family of each Individual Defendant; (c) any person who was an officer or director of the Company, at all relevant times; (d) any firm, trust, corporation, officer, or other entity in which any Defendant has or had a controlling interest; (e) any person who participated in the wrongdoing alleged herein; and (f) the legal representatives, heirs, agents, affiliates, beneficiaries, successors-in-interest, or assigns of any such excluded party.

223. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. Throughout the Class Period, Plug Power's common shares were

actively traded on the NASDAQ. While the exact number of Class members is unknown to Lead Plaintiff at this time and can only be ascertained through appropriate discovery, Lead Plaintiff believes that there are at least hundreds or thousands of members in the proposed Class. Thousands of shares of Plug Power's common stock were traded publicly during the Class Period on the NASDAQ. Record owners and other members of the Class may be identified from records maintained by Plug Power or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

224. Lead Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

225. Lead Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Lead Plaintiff has no interests that conflict with those of the Class.

226. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. The questions of law and fact common to the Class include: (1) whether Defendants violated the Exchange Act; (2) whether Defendants issued false or misleading statements; and (3) the extent to which members of the Class have sustained damages.

227. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because, among other things, joinder of all members of the Class is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for members

of the Class to individually redress the wrongs done to them.

228. There will be no difficulty in the management of this action as a class action.

COUNT I

FOR VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER (AGAINST THE COMPANY AND INDIVIDUAL DEFENDANTS)

229. Lead Plaintiff repeats and re-alleges each and every allegation contained above in ¶¶ 1-228 as if fully set forth herein and further alleges as follows:

230. This Count is asserted pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by the SEC, on behalf of Lead Plaintiff and members of the Class against the Company and the Individual Defendants.

231. During the Class Period, the Company and the Individual Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing public, including Lead Plaintiff and other Class members, as alleged herein; and (b) cause Lead Plaintiff and other members of the Class to purchase Plug Power common stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each Individual Defendant, took the actions set forth herein.

232. The Company and the Individual Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort to maintain artificially high market prices for Plug Power's common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. All Defendants are sued either as primary participants in the wrongful and illegal conduct

charged herein or as controlling persons as alleged below.

233. The Company and Individual Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about Plug Power's financial well-being, operations, and prospects, as specified herein.

234. During the Class Period, the Company and the Individual Defendants made the false statements specified above, which they knew or recklessly disregarded to be false and misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

235. The Company and the Individual Defendants had actual knowledge of the misrepresentations and omissions of material fact set forth herein, or recklessly disregarded the true facts that were available to them. The Company and the Individual Defendants engaged in this misconduct to conceal Plug Power's true condition from the investing public and to support the artificially inflated prices of the Company's common stock.

236. As a result of the dissemination of the materially false and/or misleading information and/or failure to disclose material facts, as set forth above, the market price of Plug Power' common stock was artificially inflated during the Class Period. In ignorance of the fact that market prices of the Company's securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by Defendants, but not disclosed in public

statements by Defendants during the Class Period, Lead Plaintiff and the other members of the Class acquired Plug Power securities during the Class Period at artificially high prices and were damaged thereby.

237. Lead Plaintiffs and the Class would not have purchased or otherwise acquired the Company's common stock at the prices they paid, or at all, had they been aware that the market prices for Plug Power common stock had been artificially inflated by the Company and the Individual Defendants' fraudulent course of conduct.

238. As a direct and proximate result of the Company's and the Individual Defendants' wrongful conduct, Lead Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's common stock during the Class Period.

239. By virtue of the foregoing, the Company and the Individual Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

COUNT II

FOR VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT (AGAINST THE INDIVIDUAL DEFENDANTS)

240. Lead Plaintiff repeats and re-alleges each and every allegation contained above in ¶¶ 1-228 as if fully set forth herein and further alleges as follows:

241. This Count is asserted pursuant to Section 20(a) of the Exchange Act against the Individual Defendants on behalf of Lead Plaintiff and members of the Class.

242. As alleged above, Plug Power is liable to Lead Plaintiff and members of the Class based on the materially false and misleading statements and omissions as set forth above, pursuant to Section 10(a) of the Exchange Act.

243. Throughout the Class Period, the Individual Defendants were controlling persons

of Plug Power within the meaning of Section 20(a) of the Exchange Act as alleged herein, and culpable participants in the fraud alleged herein.

244. By virtue of their high-level positions and their ownership and contractual rights, participation in, and/or awareness of the Company's operations and intimate knowledge of the Company's accounting and actual performance, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Lead Plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's financial statements, letters to shareholders, reports, press releases, public filings, and other statements alleged by Lead Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

245. In particular, the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, had the power to control or influence, the decision-making of Plug Power, including the content of its financial statements and other public statements.

246. Given their individual and collective responsibilities for managing Plug Power throughout the Class Period, the Individual Defendants were regularly presented to the market as the individuals responsible for the Company's day-to-day business and operations, as well as its strategic direction.

247. As set forth above, the Individual Defendants acted knowingly and intentionally, or in such a deliberately reckless manner as to constitute willful fraud and deceit upon Lead Plaintiff and other members of the Class who purchased Plug Power common stock during the

Class Period.

248. Each of the Individual Defendants culpably participated in some meaningful sense in the fraud alleged herein. By reason of the foregoing, and by virtue of their position as controlling persons, the Individual Defendants are liable to Lead Plaintiff and members of the Class for violations of Section 20(a) of the Exchange Act.

XII. PRAYER FOR RELIEF

WHEREFORE, Lead Plaintiff prays for relief and judgment, as follows:

(A) Determining that this action is a proper class action and certifying Lead Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure;

(B) Awarding damages in favor of Lead Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' violations of the Exchange Act, in an amount to be proven at trial, including prejudgment interest thereon;

(C) Awarding Lead Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(D) Granting such other and further relief as the Court deems just and proper.

XIII. JURY TRIAL DEMANDED

Lead Plaintiff hereby demands a trial by jury.

DATED: October 6, 2021

Respectfully submitted,

BERNSTEIN LIEBHARD LLP

By: */s/ Michael S. Bigin*

Michael S. Bigin
Stanley D. Bernstein
Peter Harrington
Adam M. Federer
10 East 40th Street
New York, NY 10016
Telephone: (212) 779-1414
Facsimile: (212) 779-3218
bigin@bernlieb.com
bernstein@bernlieb.com
pharrington@bernlieb.com
afederer@bernlieb.com

Counsel for Lead Plaintiff and Lead Counsel for the Proposed Class

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2021 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

/s/ Michael S. Bigin
MICHAEL S. BIGIN